IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	: Moshe Rock et al.	Art Unit	: 1771
Serial No.	: 09/982,720	Examiner	: Jenna-Leigh Befumo
Filed	: October 18, 2001		
Title	: DOUBLE-FACE VELOUR FABRIC ARTICLES HAVING IMPROVED DYNAMIC INSULATION PERFORMANCE		

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Pursuant to United States Patent and Trademark Office OG Notices: 12 July 2005 – New Pre-Appeal Brief Conference Pilot Program, a request for a review of identified matters on appeal is hereby submitted with the Notice of Appeal. Review of these identified matters by a panel of examiners is requested because the rejections of record are clearly not proper and are without basis, in view of a clear legal or factual deficiency in the rejections. All rights to address additional matters on appeal in any subsequent appeal brief are hereby reserved.

Claims 1-27, 30 and 37 are pending. Claim 1 is the only pending independent claim. All of the claims stand rejected under 35 U.S.C. §103(a) as being unpatentable over the combination of Lombardi et al. U.S. 4,103,518 ("Lombardi") in view of Ploch et al. U.S. 3,837,943 ("Ploch"), where the combination is either taken alone, or is in combination with at least one additional reference of record.

Applicants specifically request the panel to review the following issue:

CERTIFICATE OF MAILING BY FIRST CLASS MAIL

I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated below and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

January 17, 2006
Date of Deposit

Lisa G. Gray
Signature

Lisa G. Gray
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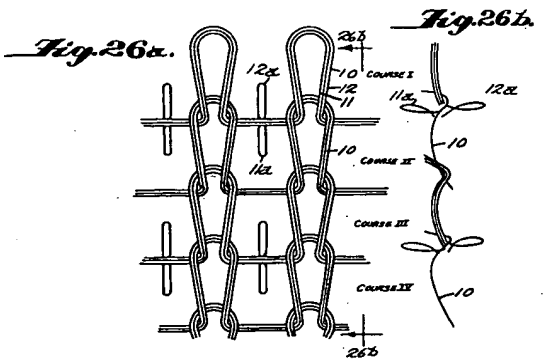
1. The combination of Lombardi et al. '518 and Ploch et al. '943 fails to support a *prima facie* case of obviousness.

All of the pending claims recite a double-face velour fabric article comprising a knitted fabric body having a technical face, formed by a filament stitch yarn, and a technical back, formed by a filament loop yarn. The filament stitch yarn comprises heat sensitive material, which responds to application of heat during processing to increase tortuosity of air flow paths through the knitted fabric body formed by interstices defined among the filament stitch yarn and the filament loop yarn of the knitted fabric body, thereby reducing the permeability of the fabric article to about 110 $ft^3/ft^2/min$ or less under a pressure difference of ½ inch of water across the knitted fabric body.

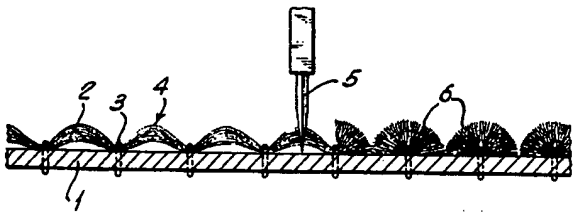
More specifically, by reducing the paths for passage of chilling wind through the fabric (page 8, lines 36-39), double-face velour fabric articles are provided having improved dynamic insulation performance, preferably while avoiding increased weight and/or loss of stretch and/or loss of flexibility, that may be worn in chilling, windy conditions without markedly diminished insulation performance. (page 3, lines 11-15)

The Examiner asserts that it would have been obvious to use a thermally sensitive yarn as employed by Ploch, as the ground yarn in Lombardi. The fabric disclosed in Lombardi is constructed using a knitting process. This process intertwines together loop yarn and ground yarn to provide a fabric having many interstices defined among the yarns, and is depicted in the figure below.



The pending claims recite a knitted fabric body where a heat sensitive material in the stitch yarn is treated with heat to increase the tortuosity in the paths of fabric formed by the interstices, thus reducing the air permeability of the fabric. Nothing in Lombardi teaches or suggests using heat sensitive material as required by the claims, nor is Lombardi relied upon for such a teaching.

In contrast to the knitting process disclosed in Lombardi, Ploch discloses a method of sewing pile or fleece onto a base fabric with a stitching thread, a representative figure of which is reproduced below:



The Examiner asserts that it would have been obvious to one of ordinary skill in the art to use a thermally sensitive yarn, as employed by Ploch, as the ground yarn in Lombardi, since Ploch describes that the thermally sensitive yarns assist in bonding the pile-forming yarns to the ground fabric, increase the bulk of the overall fabric, and fill needle holes in the ground fabric.[1] This assertion is improper because nothing Ploch teaches or suggests the use of a heat sensitive filament material to increase the tortuosity of the ground fabric.

In contrast to the thermally sensitive stitch material of Ploch, the thermally sensitive material recited in the pending claims functions to increase tortuosity of air flow paths formed by the interstitial spaces through the knitted fabric body. As can be seen from the figures depicting knitted fabric above, the interstices are a predominant aspect of a knitted fabric. The thermal material described in Ploch includes only spaced chain stitch seams (**3**) that bind the base fabric (**1**) to overlying yarns or fleece (**4**).[2]

The Examiner admits that the base material of Ploch is a fabric, even possibly a knitted fabric, made from fibrous material and inherently having spaces or openings (interstitial spaces)

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[1] See Office Action Mailed October 27, 2004, page 5.
[2] See Ploch, Col. 1, lines 27-28.

between the fibers or groups of fibers; the fabric therefore would not be impermeable.[3] With this, the Examiner asserts that one would be motivated to employ the thermally sensitive material of Ploch in a knitted fabric as described in Lombardi. However, nothing in Ploch suggests use of thermally sensitive material to address the permeability of the ground cloth itself as suggested by the Examiner.

Moreover, based on the figure above, one would understand that if the ground cloth were permeable, e.g. knitted, as suggested by the Examiner, this inherent permeability would account for the vast majority of the permeability of the fabric. Ploch does not anywhere address the inherent permeability of the ground cloth. Rather, Ploch addresses only the filling of holes formed in the ground cloth by puncturing with the needle attaching the seam sewing or stitching thread. In particular, Ploch describes employing a stitching thread that enables a particularly bulky seam (of heat sensitive thread) to fill the punctured holes in the ground fabric.

Finally, the Examiner asserts that one of skill in the art would have been motivated to combine the teachings of Ploch with Lombardi because "adding thermally sensitive yarn to bond the pile yarn to the base fabric would increase the bond between the base fabric and the loop yarn, producing a final product which is less likely to have snags on the surface and has better dimensional stability and wear resistance."[4] The Examiner's assertion lacks basis in the references themselves. Rather, the only suggestion for such a combination would be from Applicant's own specification. As is well established in law, motivation cannot come from the invention itself, but must instead come from some teaching, suggestion, or motivation found in the references themselves or in the knowledge generally available to one of ordinary skill in the art.[5]

Applicants' claimed invention is not described nor fairly suggested in the prior art, based on the references cited, nor based on the knowledge generally available to one of ordinary skill in the art. Instead, Applicants assert that the Examiner has improperly used hindsight

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[3] See Office Action Mailed July 15, 2005, page 3.
[4] See Office Action mailed July 15, 2005, page 5, paragraph 8.
[5] See, e.g., Heidelberger Druckmaschienen AG v. Hantscho Commercial Products, Inc., 21 F3d 1068, 1072 (Fed. Cir. 1993).

reconstruction of the prior art in attempting to establish a *prima facie* case of obviousness.[6] In view of the foregoing, Applicants assert that the pending claims are patentable and request that the application be allowed.

Please apply any charges or credits to deposit account 06-1050, referencing attorney docket no. 10638-025001.

Respectfully submitted,

Date: January 17, 2006

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[6] See e.g., In re Fine, 837, F.2d 1071, 1075 (Fed. Cir. 1988).